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No.

Supreme Court, U.S.
FILED
JUL 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

PATTI AND PAUL ENSIGN,

Petitioners,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

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42 pp

QUESTIONS PRESENTED

1. Whether the state violated the due process and equal protection clauses of the Fourteenth Amendment to the Constitution when it terminated the parental rights of two mentally retarded adults without a finding of intent or fault?

2. Whether the state violated the due process and equal protection clauses of the Fourteenth Amendment to the Constitution when it terminated the parental rights of two mentally retarded adults without first considering whether the state's interest could be protected by other, less intrusive alternatives?

3. Whether the state violated the due process and equal protection clauses of the Fourteenth Amendment to the Constitution when it terminated Petitioners' parental rights in the absence of clear and convincing evidence?

LIST OF PARTIES

The parties to the proceedings below were the Petitioners, Paul Ensign and Patti Ensign, and Respondents herein, The People of the State of Illinois.

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No.

In The
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October Term, 1987

PATTI AND PAUL ENSIGN,
Petitioners,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS

The Petitioners, Patti and Paul Ensign, respectfully pray that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois with respect to which a Petition for Leave to Appeal was denied by the Illinois Supreme Court on April 15, 1987.

OPINIONS BELOW

The Order of Adjudication of the Circuit Court of Illinois, Sixth Judicial Circuit, Moultrie County, Juvenile

Division, entered January 14, 1986 is reprinted in the Appendix hereto.

The Dispositional Order of the Circuit Court of Illinois, Sixth Judicial Circuit, Moultrie County, Juvenile Division, entered March 26, 1986 is reprinted in the Appendix hereto.

The Order of the Appellate Court of Illinois, Fourth District, on appeal from the Circuit Court and the opinion in support of that order are reprinted in the Appendix hereto.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257 (3). On April 15, 1987, the Illinois Supreme Court denied the Petition for Leave to Appeal. This Petition is filed within ninety (90) days of that order.

STATEMENT OF THE CASE

The State of Illinois' involvement with these Petitioners began on or about December 12, 1984, when their infant son, Paul, Jr., accidently slipped from a car carrier when his father was attempting to arrange his blanket. This happened on the street in the town where Petitioners live, and was witnessed by a townsperson. Subsequent examination by a physician revealed that the child had not been injured as a result of the fall. However, a series of county and state workers began their involvement with this family at that time, since it was apparent that these Petitioners were mentally retarded and did require some assistance with their child.

On or about July 8, 1985, a Petition for Neglect, Dependency and for the Termination of Parental Rights was filed by the State of Illinois. A hearing was held on that Petition on December 17, 1985, and continued to January 7, 1986. An Order of Adjudication and a Dispositional Order were entered that day and filed on or about January 14, 1986. Several motions for new hearings were filed, on procedural and constitutional grounds, however, these were denied and a new dispositional hearing was held on or about March 26, 1986, and a Dispositional Order terminating Petitioners' parental rights and ordering the adoption of the child was entered on that date.

Petitioners have not seen their son since the day the State of Illinois took him at the beginning of this action in late 1985.

The trial in this case revealed a consensus of opinion with regard to these Petitioners' inability to raise their son *alone*, without the assistance they had been receiving since 1984. There was also consensus of opinion regarding the healthiness and happiness of this baby. All trial testimony addressed the issue of these Petitioners' current and future abilities to raise this child without assistance. There were no allegations, other than the accident with the

carrier addressed above, that these Petitioners had acted in any way neglectful or abusive to the child. Indeed, there was consensus that Petitioners loved their child and were making every attempt to learn to care for him alone. The state conceded at the onset of the action that the facts it would prove were in no way caused through any fault, or intent of the Petitioners, but arose because of Petitioners' mental deficiencies. The state did indeed prove that these Petitioners are probably incapable of ever raising this child without some assistance.

Evidence was introduced as to those state and county services that exist to assist parents with raising their children.

The trial court ordered that Petitioners be examined by psychologists to test their mental abilities, abilities to discharge parental responsibilities, and the likelihood that their mental retardation would be alleviated in the future. The two psychologists confirmed Petitioners retardation, opined their inability to discharge parental responsibilities without assistance, and confirmed that they would continue throughout their lives to be retarded. Neither psychologist met the child, nor observed the child with Petitioners. Neither psychologist recommended termination of these Petitioners' parental rights.

After the trial court entered the Dispositional Order outlined above, a Notice of Appeal was filed approximately one (1) month later, on or about April 15, 1986. On or about October 30, 1986, the Appellate Court of Illinois, Fourth District, entered an order affirming the trial court's Adjudicatory and Dispositional orders. On or about November 20, 1986, Petitioners filed a Petition for Rehearing on constitutional and procedural grounds with the Illinois Appellate Court. An Affidavit of Intent to Seek Review in the Illinois Supreme Court was filed by Petitioners on or about December 8, 1986. On December 9, 1986, a Petition for Certificate of Importance was filed with

the Appellate Court and denied on or about December 17, 1986. On or about January 6, 1987, Petitioners filed a Petition for Leave to Appeal as a matter of Right and Petition for Leave to Appeal with the Supreme Court of Illinois. That Petition was denied on or about April 15, 1987. On May 21, 1987, the Supreme Court of Illinois granted Petitioners Motion for Stay of Mandate pending the timely filing and disposition of this Petition for Writ of Certiorari in the United States Supreme Court.

The issues on appeal involve the state's denial of Petitioners' rights to due process and equal protection under the law.

REASONS FOR GRANTING THE WRIT

I.

The state violated the due process and equal protection clauses of the Fourteenth Amendment when it terminated the parental rights of two mentally retarded adults without a finding of intent or fault.

This case presents the question of whether a state may terminate parental rights when there are no findings of either fault or *intentional* neglect or abuse. Petitioners are the mentally retarded adult parents of a two and a half year old boy. Their parental rights were terminated by the circuit court of Moultrie County, Illinois following a finding of neglect by a preponderance of the evidence, (Slip Opinion at 11.) *Ill. Rev. Stat.* 1985, ch. 37, par. 702-5. The Court then found Petitioners to be unfit parents by "clear and convincing evidence," (Slip Opinion at 14.) *Ill. Rev. Stat.* 1985, ch. 37, par. 705-9(2). The State was made guardian of the minor child with the power to consent to adoption.

Petitioners believe that there was insufficient evidence to support either findings, or the order of adoption. (*See*, Question and Argument 3, infra.)

However, assuming that there existed sufficient evidence to support either finding, the permanent severance of parental rights, without a finding of intent or fault, is an unduly harsh consequence and violates due process, as well as equal protection in this case. As the appellate court noted, the state had conceded from the outset "that the neglect and abuse were not intentional but arose from Respondent's mental deficiencies." (Slip Opinion at 1.) Nonetheless, the court found that "a parent can be unfit (thus his parental rights terminated) without fault." (Parentheses added.) Petitioners disagree. While a court, at an adjudicatory hearing, may make a finding of neglect and abuse without a finding of intent or fault, it does not follow that a

court, in a dispositional hearing, can sever the sacred and fundamental constitutionally-protected parent/child relationship without proving that the parents intentionally, or with fault, abused or neglected their child. In short, Petitioners believe that in order to impose the harshest consequence available in such cases, there must be a finding of fault or intent, as well as concern for the "best interest of the child", which was the sole justification that the state court used to terminate these Petitioners' parental rights. (Slip Opinion at 19.)

This ruling violates the constitutionally-protected rights of all parents, but is unduly harsh in its impact and discriminates against parents who are mentally retarded. All persons with mental deficiencies have reduced ability to cope with and function in the everyday world. *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313, 53 U.S.L.W. 5022 (1985). These deficiencies were unfairly perceived and interpreted to constitute neglect. For instance, the court took special note of the fact that Petitioners were unable to articulate their words as clearly as persons with normal intelligence, as well as Petitioners' alleged inability to remember birth and anniversary dates. The court's reliance on these deficiencies demonstrates inherent prejudice against persons with mental retardation and is not, in any way, rationally related to the legitimate governmental purpose of protecting the children of this state. Bases upon the court's reasoning, it follows that without a finding of intent or fault, parents with mental retardation will automatically be denied the right to raise their children because their mental deficiencies will be prejudicially perceived and interpreted as neglect and abuse by the state, albeit "without fault."

Restrictions based on mental retardation must be rationally related to a legitimate governmental purpose and may not rest upon "irrational prejudice." *Ibid.* The

right of parents to the care and custody of their children is fundamental to our constitutional system. *See, Meyer v. State of Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 29 A.L.R. 1446, 67 L.Ed. 1042 (1923), *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), and *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). This case offers this Court an opportunity to affirm that the rights of mentally retarded persons cannot be lost or diminished solely because of their handicap. Cf. *In re Marriage of Carney*, 24 Cal.3d 725, 598 P.2d 36, 157 Cal.Rptr. 383 (1979) (holding that physically handicapped parents have a right to the care and custody of their children.) Although this Court held in *Buck v. Bell*, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927), that a mentally retarded person had no right to procreate, that decision has been undercut by *Skinner v. Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942), and its continuing validity is doubtful. Due process and equal protection should require that a state prove some fault or intent before parental rights can be severed completely. Compare *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) and *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed. 297 (1979) (holding that parental rights could be severed where the parent had failed to establish any custodial, personal or financial relations with the child) with *Stanley v. Illinois*, *supra*, (holding that a state must establish unfitness and proof of neglect at a hearing when it attempts to dismember a family.) And see *Santosky v. Kramer*, *supra*, n.10, (noting that parental rights cannot be terminated solely because it is in the "best interest of the child.")

In this case the state itself has conceded that the parents are without fault; the only problem is that they both happen to be mentally retarded. The ruling of the Illinois courts thus violates equal protection because it directly discriminates against handicapped persons and severs their parental rights protected by due process of law.

II.

The state violated the due process and equal protection clauses of the Fourteenth Amendment when it terminated the parental rights of two mentally retarded adults without first considering whether the state's interest could be protected by other, less intrusive alternatives.

This case presents a question of the degree of scrutiny necessary to justify a decision to terminate the parental rights of mentally retarded adults. This Court has held that mentally retarded persons in and of themselves are not a suspect class for purposes of equal protection analysis. *City of Cleburne v. Cleburne Living Center, supra.* But this case also involves the fundamental constitutional right of parents to raise and care for their children. *Meyer, Stanley, Santosky, supra.* This fundamental right, which is generally grouped under the right of privacy, is given the greatest degree of scrutiny by the courts when it is infringed upon by state actions. *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), *Moore v. City of East Cleveland,* 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). The traditional test in such cases is whether the restriction is "necessary," or whether a compelling state interest exists to justify such a result. A restriction is not "necessary" if a state can accomplish its goals through less restrictive alternatives. *Shelton v. Tucker,* 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed. 231, (1960); *Bakke v. Regents of the University of California,* 98 S.Ct. 2733, 438 U.S. 265, 57 L.Ed. 750 (1976).

In the present case, the lower courts failed to consider evidence that the state's objective of protecting the health or safety of the child could have been accomplished by less intrusive means. A number of obvious, easy alternatives come to mind: requiring the presence of a competent adult on the household at least at certain times of the day, providing training for these retarded parents, or providing

temporary foster care. These or other alternatives would have had the virtue of maintaining the family unit to a greater extent that the order entered below which permanently and irrevocably severed all family ties.

Even if the Court were not to use the strictest form of scrutiny, this Court has held under the reasonableness standard that "the existence of obvious easy alternatives" may be evidence that the state's response is not reasonable, but is an "exaggerated response." *Turner v. Safley*, 107 S.Ct. 2254, 55 U.S.L.W. 4719 (1987). The presence of obvious and easy alternatives belies the reasonableness of severing the parental ties in this case and clearly establish that the action taken by the state courts was based upon "irrational prejudice" against handicapped persons. *City of Cleburne v. Cleburne Living Center, supra.*

As discussed in our final argument, the child in this case was alert, healthy, gaining weight, happy, well-cared-for, and not developmentally delayed. There was no allegation of abuse or failure to gain weight and thrive. These parents had recognized the limitations inherent in their disability and had sought, and received, the assistance of state agencies in caring for him. Just as some families require financial assistance from the state, these parents required other forms of assistance. The evidence shows that Petitioners were benefiting from the services; not only was the baby healthy and happy, but the Petitioners' knowledge and parenting skills improved through those services. Despite this evidence, the trial Court made the decision to look only at the parents' limitations, rather than the current condition of the child, in making the decision to terminate the Petitioners' parental rights. This standard was found to be proper by the Illinois Court of Appeals. Consequently, a new standard now exists for termination of parental rights in the State of Illinois. Parents only have the constitutional right to raise their children if they can do so alone–without the assistance of the com-

munity services that exist for the very purpose of assisting parents such as these Petitioners.* We fail to see the state's necessity in this position, especially in light of the less intrusive alternatives.

The court's two psychologists who testified at the trial level rejected termination and suggested less intrusive and restrictive alternatives. Where a state interest conflicts with fundamental personal liberties the means by which that interest is promoted must be carefully selected so as to result in the minimum infringement of the protected rights. *Griswold v. Connecticut* 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); *NAACP v. Alabama*, 377 U.S. 288, 84 S.Ct. 1302, 12 L.Ed. 325 (1964). Governmental purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The state court's failure to consider obvious and easy alternatives, or evidence as to less intrusive means to achieve the state's end, prior to irrevocably and permanently severing all ties between these Petitioners and their child is a violation of Petitioners' constitutional rights to equal protection and due process.

III.

The state violated the due process and equal protection clauses of the Fourteenth Amendment when it terminated Petitioners' parental rights in the absence of "clear and convincing evidence".

This Court has specifically required a state to produce "clear and convincing evidence" of unfitness prior to severing completely and irrevocably parental rights. *Santosky v. Kramer*, 455 U.S. 745 (1982). The trial court stated that it found that the minor was neglected by the preponderance of the evidence standard. (Slip Opinion at 11.) *Ill.Rev.Stat.* 1985, ch. 37, par. 702-5. The court then stated that it found the Petitioners to be unfit parents by the "clear and convincing evidence" standard. (Slip Opinion

* Although *Ill.Rev.Stat.* (1985), ch. 37, par. 705-7 requires a finding that "appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions" contributing to the neglect, the lower courts did not make such a finding.

at 14.) *Ill.Rev.Stat.* 1985, ch. 37, par. 705-9(2).

The courts below parroted the "clear and convincing" standard, but the record is devoid of evidence to support their findings. Although this Court normally will not review findings of fact made by the lower courts, it will do so when no evidence supports the court's conclusion, *Thompson v. Louisville*, 362 U.S. 199, 80 S.Ct. 624, 80 A.L.R.2d 1355, 4 L.Ed.2d 654 (1960), or when findings of fact and law are inextricably intermingled, *Fiske v. Kansas*, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108 (1927), or when the state courts attempt to frustrate federal law by distorted fact finding. *Cox v. Louisiana*, 85 S.Ct. 453, 378 U.S. 536 (1965). These circumstances are present in this case. The Illinois courts found Petitioners to be unfit parents even though there was no evidence:

of failure to thrive;
of improper nutrition or clothing;
of any lack of necessary medical care;
of any injuries;
of abandonment;
of any lassitude;
of any delayed development;
that the child was dirty or uncared for;
of undernourishment; and
of any neglect or abuse.

To the contrary, there *was* evidence:

that the child was receiving proper nutrition (R. 35, 40, 112, 131, 105, 159);

that the child received appropriate medical care (R. 159, 213);

that the parents provided emotional and physical stimulation for the child (R. 189, 159, 167, 184, 201, 217, 219, 201, 198-200);

that Petitioners could continue to improve their parenting skills, despite their disability (R. 220, 223-4,

227, 246, 198-200, 106-7, 114, 127-134, 35);

that the Petitioners cooperated fully with all services offered to them (R. 20, 41, 210, 216); and

that Petitioners love their child and care for him (R. 159, 167, 184, 201).

The record thus reflects that the Petitioners love their child, (R. 159) accepted assistance when they needed it, (R. 41) and constantly tried and learned to perfect their parenting skills, (R. 127-134.) The baby was loved, happy, healthy, thriving and developing normally. (R. 159,105,213.) The only evidence in the record adverse to Petitioners is that they were mentally retarded. Mental retardation alone is constitutionally insufficient to sever the parental relationship.

The state violated these Petitioners' due process and equal protection rights through its finding of unfitness and termination of these Petitioners' parental rights without the necessary clear and convincing evidence to support those decisions.

CONCLUSION

For the reason stated above, this Court should grant the Petition for Writ of Certiorari in order to review the final judgment of the Illinois Appellate Court in this case.

Respectfully submitted:

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APPENDIX

APPENDIX A

IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT, ILLINOIS
Moultrie County, Juvenile Division

IN THE INTEREST OF

PAUL ENSIGN, JR.
a minor

No. 85-L-124

ORDER OF ADJUDICATION

On petition for adjudication of wardship, the court, after considering the evidence, finds:

1. The court has jurisdiction of the case and of all parties.

2. The minor is

☐ delinquent.

☐ otherwise in need of supervision.

☒ neglected.

☒ dependent.

3. It is in the best interests of the minor and of the public that the minor be made a ward of the court.

It is ordered:

a. The minor is adjudged a ward of this court;

b. Dispositional hearing is set for N/A, 19____, at N/A ___ m.;

c. Pending dispositional hearing the minor is placed in temporary custody of _____ _____to be kept in a suitable place.

Jan. 14th 1986

W.B. KRANZ
Judge

FILED
JAN 14 1986

CIRCUIT COURT
MOULTRIE COUNTY

APPENDIX B

FILED
MAR 26 1986

STATE OF ILLINOIS
IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
MOULTRIE COUNTY

IN THE INTEREST OF
PAUL ENSIGN, JR.
A Minor.

No. 85-L-124

DISPOSITIONAL ORDER

This cause having come for Adjudicatory Hearing on December 17, 1985 and January 7, 1986 and for Dispositional Hearing on March 26, 1986 and Respondent mother, Patty Ensign being present with her attorney, Sharon Buckler, and Respondent father, Paul Ensign, being present with his attorney, Oliver D. Elder, and Paul L. Stone, Moultrie County State's Attorney being present, and Dan Flannell, Guardian Ad Litem for the minor being present, the Court having heard evidence and arguments of counsel and being fully advised finds:

1. That it has jurisdiction of the parties hereto and the subject matter hereof, all parties having been served with Summons.

2. That Paragraph 6(a), 6(b), 6(c), 6(d) and 6(f) of the Petition for Neglect, Dependency and for the Termination of Parental Rights filed July 8, 1985 having been proven by a clear and convincing evidence as follows:

(a) That the Respondent mother and father are unfit parents in that they failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare;

(b) That the Respondent mother and father are unfit parents in that they substantially neglected the child repeatedly;

(c) That the Respondent mother and father are

unfit parents in that they failed to protect the child from conditions within his environment injurious to the child's welfare;

(d) That the Respondent mother and father are unfit parents in that they failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first thirty days after its birth;

(e) That the Respondent mother and father are unfit parents in that they have been determined unable to discharge parental responsibilities by competent evidence from a Clinical Psychologist of Mental Impairment, and/or Mental Retardation as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code, and there is sufficient justification to believe that such inability to discharge parental responsibilities shall extend beyond a reasonable time period.

3. That it is in the best interests of the minor and the public that the minor be made a ward of the Court.

4. That it is in the best interests of the minor to terminate the parental rights of the Respondent parents and that a Guardian with the power to consent to the adoption of said minor be appointed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the minor is declared a neglected and dependent minor and made a ward of this Court and that the parental rights of Respondent parents, Paul Ensign and Patty Ensign are hereby irrevocably terminated, that Gary T. Morgan, Guardianship Administrator for the Department of Children and Family Services or his successor in office be and is hereby made legal guardian and legal custodian of said minor, Paul Ensign, Jr., with the power to consent to the adoption of said minor and that the consent to the adoption of the said minor by said legal guardian shall be binding upon Respondent parents Paul Ensign and

Patty Ensign without any further notice to them or consent by them.

ENTER: March 26, 1986

W.B. KRANZ

CIRCUIT JUDGE

APPENDIX C

No. 4-86-0265

IN THE APPELLATE COURT OF ILLINOIS FOURTH DISTRICT

In The Interest of Paul Ensign, Jr., a Minor THE PEOPLE OF THE STATE OF ILLINOIS,
Petitioner-Appellee,

v.

PATTY ENSIGN and PAUL ENSIGN, SR.,
Respondents-Appellants.

Appeal from the Circuit Court County of Moultrie

No. 85L124

Honorable Worthy B. Kranz, Judge Presiding.

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OCT 30 1986
Clerk of the
Appellate Court
4th Dist.

No. 4-86-0265

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In The Interest of Paul Ensign, Jr., a Minor
THE PEOPLE OF THE STATE OF ILLINOIS,
Petitioner-Appellee,

v.

PATTY ENSIGN and PAUL ENSIGN, SR.,
Respondents-Appellants.

Appeal from Circuit Court County of Moultrie

No. 85L124

Honorable
Worthy B. Kranz,
Judge Presiding.

JUSTICE SPITZ delivered the order of the court:

Paul Ensign, Jr., was born on November 28, 1984, to Patti and Paul Ensign, Sr., a mentally retarded couple. Paul, Jr., suffers from microcephaly. A petition for neglect, dependency, and for the termination of parental rights was filed July 8, 1985. A hearing was held on that petition on December 17, 1985, and continued to January 7, 1986. The State noted at the outset that the neglect and abuse were not intentional but arose from respondents' mental deficiencies.

The State's first witness was Nancy Robbins. Robbins testified that she had known respondent, Paul Ensign, Sr., for over 20 years and had become acquainted with respondent, Patty Ensign, since she had married Paul. In December 1984, she had been near the Spot restaurant in Sullivan when respondents' child, Paul Ensign, Jr., was 11 to 12 days' old. Respondent father was holding the child on a plastic infant seat in front of him. He brought his knee up to balance the seat and the baby and blanket covering him slid out, falling about three feet to the sidewalk. Respondent mother become hysterical, and respon-

dent father replaced the child and they moved on down the street. After 30 to 40 seconds, the baby started to cry.

The State's next witness was Joy Colclasure. Colclasure testified that she also knew respondents and had learned of the previously mentioned incident from Nancy Robbins. Concerned that the baby had not been taken to a doctor, the two women searched for respondents. The child had not been checked by a physician so Joanna Cole, the county nurse, was contacted. Following this incident, Colclasure began to take formula, food, and towels over to respondents' residence, a second-floor apartment which she described as in not too bad of shape. Respondents, however, were dirty and needed to bathe. There was little food around. Colclasure showed respondent mother how to mix the formula she brought and attempted to get her to keep the empty bottles in the refrigerator so that she could determine the amount of milk the child was ingesting. This met with little success. Colclasure continued to go to respondents' home regularly, attempting to get them to practice better hygiene and bringing them the necessary items to do so. She also tried to get respondent mother to rotate the baby's head and put him in different positions. Respondent mother agreed to this, but to Colclasure's knowledge, it was never done. The heat in respondents' apartment was always kept much too high, although the apartment was never very poorly kept.

Joanna Cole, the Moultrie County health nurse, testified that Linnea Lamendole, owner of the Spot restaurant, alerted her to the fact that Paul Ensign, Jr., had been dropped. She checked the baby and found no contusions or bruises, but had a policeman take the child to the doctor anyway. Later respondents brought the boy in for immunization and to pick up their certificates to obtain food for him. The medical staff was concerned that the baby was not wrapped properly and was not being strapped in his carrier. Although instructed in the proper proce-

dure, respondents did not immediately correct the situation. When Paul, Jr., got bigger, they put him in a stroller. Cole had also been to respondents' apartment and described it as poor, but not unsanitary. Most of the time the baby appeared well. On cross-examination, Cole noted that she also recalled respondents' apartment being extremely hot. Respondent mother did not know how to change the baby at that time. Although respondents made some progress in caring for their child, Cole still feared for the baby's safety. During redirect, Cole revealed that respondents' progress was inadequate to enable them to independently discharge their parental responsibilities toward the child or to properly raise him and provide for his safety.

Dr. Jean Roland Gillespie, a registered psychologist, stated that she had received background information on respondents and interviewed them herself. She also went to lunch with them in order to observe them in a social setting and to note their ability to pay bills. Respondent father was noted to be functioning at a higher intellectual level than his wife and could write his name and count, but was unable to write or recite the alphabet. Both respondents could identify colors. Respondent father was oriented to place, but not time, and was confused about his birthdate, his child's birthdate, and his anniversary. Respondents were able to decide what they wanted for lunch, but did not know if the cashier gave them the proper amount of change. Respondent mother was apparently prone to falling asleep frequently and was very difficult to arouse. She also was unable to read the oven dial so was forced to boil or fry all foods. Respondents prepared the baby's milk by leaving his bottle out to warm to room temperature since he did not like his milk cold. Respondents both had articulation and language development problems. Respondent father was functioning at a 7-year-old level and he has an IQ of 43, which is in the mentally defective range. Respondent mother has an IQ of 36, which is also in the mentally defective range. She also had

difficulty with her short-term memory. Both respondents had difficulty understanding and recalling directions of simple self care, and, even when they learned simple tasks, had a tendency to forget them. In an emergency situation, neither respondent would know what to do if they were unable to reach a helpful third party. Gillespie was concerned if they could even recognize a problem. In Gillespie's opinion, neither respondent was capable of discharging their parental responsibilities, and respondents would not be able to learn the skills necessary to enable them to keep their child regardless of their motivational level. Gillespie's recommendation had not been termination of respondents' parental rights, but had been for foster care with vistation.

The State's next witness was Susanne Wainscott, a registered nurse who made home visits to respondents beginning in December of 1984. Originally, she came to deal with respondents as developmentally disabled adults, attempting to assess their baby's environment and offer services to respondents. At the first meeting, Wainscott gave respondents general instructions on handling the baby, instructing them to pick him up by the body as opposed to respondents' habit of lifting him by the arms, and telling them how to properly support his head. By the time of the hearing, respondents still required the same instructions. Wainscott also noticed rough handling of the baby, including bouncing at a very early age and letting the child roll off a pillow onto the floor. At two months, respondent father was bouncing the child from his abdomen onto the infant's head. Respondent father was still handling the child roughly at the time of the hearing. Wainscott had observed that the child's bottle was at times too hot and at times too cold. When she asked how many bottles the baby had taken, Wainscott was invariably told two. On her last visit, she observed a large box, full of garbage and roaches. Respondent father took it out. Medicine had been left on the floor in an area where the

baby was often allowed to lie. Other items also littered the floor. Although constantly instructed to turn the thermostat down, respondents failed to ever comply. They were also instructed to fix a large hole in their screen door but failed to do so after two months. Wainscott was still forced to repeat the same instructions to respondents as she had when she first became involved with them. Their cleanliness was of major concern. Wainscott expected no improvement regarding respondents' parenting skills.

Ron Matthews testified that he was the executive director of the Moultrie County Counseling Center. He had known respondent father for 10 years and respondent mother for two. His first involvement with the two came when they were living with respondent's mother in an unfit mobile home, heating it by burning wood and rags in a five-gallon bucket in the middle of their living room. Following the mother's death, the situtation deteriorated even further and became unlivable. A mental test of respondent father showed that he was mentally retarded. The doctor believed that respondent's judgment potential was impaired and that he would be unable to adequately discharge his parental responsibilities in raising a child. Matthew believed that this condition would remain unchanged. It was also Matthew's belief that respondent mother would be unable to make appropriate judgments as to the child or to determine what was required in any but the most basic medical situation. In his opinion, she was unable to discharge her parental responsibilities. Matthew believed that respondents could benefit from a shelter-care situation but such would be unavailable to them with a child. Matthew questioned respondents' ability to provide a well-balanced diet for their child, but felt that they loved him.

The State called Jackie Guin who had known respondents for about a year. On July 4, 1985, she observed respondents at an Independence Day festival. Respondent

father had the baby on a picnic table and dragged him by the legs down the top of the splintery surface about four feet. He also held the baby up to within one foot of the speaker from which extremely loud music was coming.

David Cole testified that he was the supervisor for Illinois Department of Children and Family Services (DCFS) and confirmed that shelter-care facilities in the area did not accept children. He also advised the court that retarded children were fairly easy to place once they were available for adoption, and that foster-care placements were not good alternatives due to the lack of permanency that they entailed. The State rested.

Respondents' counsel moved for a directed finding in their favor but the motion was denied. Virginia Duaz, a pediatrician, testified that she knew respondents and that their son had been brought to her for a general checkup in February of 1985, when he was 2 1/2 months old. She had noticed that his head was very small and flat. She saw him again when he was five months old. At that time, the child was gaining weight but his head was still extremely small. A month later, conditions were unchanged. It was discovered that both respondents also had very small heads. At nine months, the boy was standing up with support. At 11 months, it was advised that the child be placed in a program which provided developmental support. No signs of abuse were ever observed on the child. Duaz opined that his motor development was within normal limits.

Daile Rozene testified on behalf of respondents. He was a farmer who had employed respondent father for about 15 years. Respondent father drove the tractor, plowed, and disced for Rozene, in addition to taking grain to the elevator. Rozene characterized him as a good worker who could recognize potential mechanical problems and had never been injured. Respondent father was always ready when Rozene arrived for him. Respondent father loved his child. the child always appeared to be prop-

erly cared for. There were no signs of neglect. Rozene felt that respondent father was able to properly discharge his parental responsibilities. On cross-examination Rozene acknowledged that he made the decisions on the farm and dictated in what order they were to be discharged. Rozene estimated that respondent father worked part-time on his farm six months out of the year.

Daniel Pochetti testified that he was a physician specializing in pediatrics and pediatric neurology and had seen the minor child in this case when he was 9 or 10 months old. He examined the child's head and found that he had a genetically related microensophallic condition. Nothing could be done to make his brain grow to normal size. He was high rise for developmental delay and retardation. Professional stimulation was advised. Dr. Pochetti testified that respondents both appeared to love the child and no physical abuse was suspected. It would be difficult for him to adjust to separation from his parents, although not impossible. On cross-examination, Pochetti considered it very likely that the child would be slower in learning to appreciate dangers due to his developmental problems. His emotional and mental development would likely be set back by removal from his parents; however, if he stayed with them, outside assistance would definitely be required due to respondents' mental handicaps. Dr. Pochetti acknowledged that he was neither a psychiatrist nor a psychologist and had never observed or examined either respondent other than during the child's office visits.

Vicki Baxter, a social worker who had been involved with the minor child since December of 1984 as a caseworker, testified that respondents were cooperative during her visits to assist in child rearing techniques and transportation, which occurred once or twice a month. Their home was adequate, and respondents had a caring attitude toward the child but did not provide enough attention to his emotional development. A homemaker would be required

on a permanent basis so long as the child remained in respondents' home. Respondents did not provide or possess the ability to independently care for the physical needs of the child or to give him proper stimulation.

The DCFS homemaker, Rene Willoughby, testified that she had been in contact with respondents and their child since December 18, 1984. At the time, the child needed to be bathed and fed. Willoughby helped respondent mother mop floors and keep things clean. Respondent mother was cooperative, and the baby's health was always good. Willoughby took the child for a doctor appointment and had to bribe respondent mother with the promise of a milk shake if she was "good." Respondent mother could not handle the baby alone. Respondents could not comprehend that a child often does not know when he should not handle something or put it in his mouth and tended to leave things on the floor.

Bob Wheaton testified that he was respondent father's brother-in-law and spent a lot of time with respondents. Occasionally their child might roll off the bed and bump his head but he was not abused. He was appropriately dressed and fed. Wheaton stated that he would take the child to a doctor if the situation required it.

Respondent father took the stand in his own behalf. He confirmed his employment with Daile Rozene. Respondent father appeared to understand the meaning of the proceedings fairly well. He said he would be willing to cooperate with those attempting to help him. Respondent father said that he could feed and change his son. He remembered when the child had slipped from his grasp at an early age as had been previously testified to. He felt that he could raise the child but seemed to understand that he needed help. Respondent father said that he had a sixth-grade education. Respondents rested.

An order of adjudication and a dispositional order were entered on January 7, 1986, and filed on January 14, 1986.

The order of adjudication contained a finding pursuant to section 2-4 of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 702-4) that the minor was neglected and abused, and a finding pursuant to section 2-5 of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 702-5) that the minor was dependent and the minor was made a ward of the court pursuant to section 1-4(b) of the Juvenile Court Act. (Ill. Rev. Stat. 1985, ch. 37, par. 701-4(b).) The dispositional order contained a finding pursuant to section 5-9(2) of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 705-9 (2)) and section 1 of the Illinois Adoption Act (Ill. Rev. Stat. 1985, ch. 40, par. 1501) that respondents were unfit parents. Respondents' parental rights were terminated, the minor was removed from respondents' custody, and the minor was placed in the custody and guardianship of the Department of Children and Family Services with said guardian being granted the power to consent to the adoption of the minor. Several motions for new hearing were filed and another dispositional hearing was held March 26, 1986. A new dispositional order was entered that day. Notice of appeal was filed on April 15, 1986.

The first argument raised by respondents on appeal is that the State failed to prove that Paul Ensign, Jr., was neglected or abused or was a dependent minor. At an adjudicatory hearing, the applicable burden of proof for a finding of neglect or abuse pursuant to section 2-4 of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 702-4) and for a finding that an individual is a dependent minor pursuant to section 2-5 of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 702-5) is the preponderance of the evidence standard (Ill. Rev. Stat. 1985, ch. 37, par. 701-4 (a); *In re Hill* (1981), 102 Ill. App. 3d 387, 430 N.E.2d 75), and the court's determination will not be overturned on review unless it is against the manifest weight of the evidence. *Hill.*

Section 2-4 of the Juvenile Court Act (Ill. Rev. Stat.

1985, ch. 37, par. 702-4) provides, in pertinent part:

> "(1) Those who are neglected include any minor under 18 years of age:
>
> whose parent or other person responsible for the minor's welfare does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter, or who is abandoned by his or her parents or other person responsible for the minor's welfare.
>
> (2) Those who are abused include any minor under 18 years of age:
>
> * * *
>
> (b) whose environment is injurious to his or her welfare."

Section 2-5 of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 702-5) provides, in pertinent part:

> "(1) Those who are dependent include any minor under 18 years of age ***;
>
> (b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian; ***."

The findings of neglect and dependency are both founded upon the conclusion that respondents have failed to provide proper care for the minor. The evidence that was presented in this case revealed that respondents were unable to (1) properly feed the child; (2) properly regulate the temperature in their apartment; (3) recognize and appropriately respond to medical emergencies; and (4) provide adequate emotional and physical stimulation. The fact that the minor in this case suffers from microcephaly and is a high risk for developmental delay and retardation placed an even more severe responsibility on respondents which they are unable to discharge. The best interest and welfare of the child is the essential policy considera-

tion in child neglect cases (*In re Stilley* (1977), 66 Ill. 2d 515, 363 N.E.2d 820) and the minor's physical problems are definitely a factor that should be considered in the instant case. In making a finding of neglect, a court is to determine whether a child is receiving the care necessary for his well-being, and not necessarily whether the parents have been "neglectful." *In re Gates* (1978), 57 Ill. App. 3d 844, 373 N.E.2d 568.

The finding of abuse in the instant case is based on the conclusion that the minor's environment is injurious to his welfare. The evidence that was presented in this case revealed that (1) the minor was accidentally dropped on a hard surface at a very young age; (2) respondents fail to comprehend potentially dangerous conditions in and around their home, and tend to leave dangerous items, such as medicine, within the minor's reach; and (3) respondents have a severely limited ability to recognize and respond to medical emergencies that might arise. This evidence clearly supports the trial court's finding of abuse.

We believe that the court's finding of abuse, neglect, and dependency are all amply supported by the record in this case, particularly in light of the applicable preponderance of the evidence standard.

Respondents' final argument is that the State failed to prove that they were unfit parents by clear and convincing evidence. Pursuant to section 5-9(2) of the Juvenile Court Act (Ill. Rev. Stat. 1985, ch. 37, par. 705-9(2)), the court may terminate parental rights upon finding that the parents are unfit as defined in section 1D of the Illinois Adoption Act (Ill. Rev. Stat. 1985, ch. 40, par. 1501D), which provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption, the grounds of such unfitness being any one or more of the following:

* * *

(b) failure to maintain a reasonable degree of interest, concern or responsibilty as to the child's welfare;

* * *

(d) substantial neglect of the child if continuous or repeated;

* * *

(g) failure to protect the child from conditions within his environment injurious to the child's welfare;

* * *

(1) failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a new born child during the first 30 days after its birth;

* * *

(o) repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.

(p) inability to discharge parental responsibilities supported by competent evidence from a psychiatrist or clinical psychologist of mental impairment, mental illness or mental retardation as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that such inability to discharge parental responsibilities shall extend beyond a reasonable time period."

The trial court entered finding of parental unfitness pursuant to subsections (b), (d), (g) (*1*), (o), and (p) of section 1D of the Adoption Act (Ill. Rev. Stat. 1985, ch. 40, par. 1501D(b), (d), (g), (*1*), (o), (p)). Respondents contend that the State failed to prove unfitness based on any of these subsections by clear and convincing evidence.

As the court stated in *In re Adoption of Burton* (1976),

43 Ill. App. 3d 294, 301, 356 N.E.2d 1279, 1285:

> "[T]he steps taken in an adoption proceeding are subject to the most careful judicial scrutiny, and that to justify termination of a natural parent's rights, unfitness must be established by clear and convincing evidence."

However, as the court stated in *In re Jones* (1975), 34 Ill. App. 3d 603, 607-08, 340 N.E.2d 269, 273:

> "[I]n determining whether in this case parental unfitness was proved by clear and convincing evidence, we bear in mind that the trial court's finding should not be disturbed unless it is contrary to manifest weight of the evidence [citation]; [and] that the credibility of witnesses is a matter we must leave to the trier of the facts [citation]; ***."

See also *In re R.M.B.* (1986), 146 Ill. App. 3d 523, 527-28, N.E.2d

We believe that the findings of unfitness pursuant to all six of the subsections quoted above are amply supported by the record in this case. Any one of these findings, if supported by clear and convincing evidence, is sufficient to support the trial court's decision to terminate parental rights in this case.

Although substantial evidence was presented to support each of the findings, we conclude that the finding pursuant to subsection (p) (Ill. Rev. Stat. 1985, ch. 40, par. 1501D(p)) is the most conclusive and indisputable. Two registered psychologists, as well as several other trained professionals, testified that respondents both suffered from severe mental impairment, and this fact is not in dispute. The evidence in this case has conclusively demonstrated that due to severe mental impairment, respondents are unable to discharge their parental responsibilities. As previously stated, respondents are unable to provide proper nutrition, medical care, and emotional and physical stimulation for the minor. Furthermore, in the instant case there is more than sufficient justification to believe that

respondents' inability to discharge parental responsibilities will extend beyond a reasonable time. The undisputed evidence, as presented by the psychologists and the other trained professionals who were involved in this case, is that respondents' conditions of severe mental impairment will not be alleviated in the foreseeable future. The minor is at high risk for developmental delay and retardation, and these conditions are likely to manifest themselves in the future, thereby increasing the amount of care the minor will need. As the respondents' parenting skills remain static and the minor's need for care and stimulation increases, respondents' abilities to discharge their parental responsibilities would consequently be diminished even further. The trial court's finding of parental unfitness pursuant to section ID(p) of the Adoption Act (Ill. Rev. Stat. 1985, ch. 40, par. 1D(p)) is definitely supported by clear and convincing evidence.

The trial court's findings of unfitness pursuant to section 1D(b), (d), (g), (*1*), and (o) (Ill. Rev. Stat. 1985, ch. 40, par. 1501D(b), (d), (g), (*1*),(o)) are all interrelated and based upon the same facts in evidence . Respondent father dropped the minor at a very young age, and respondents took no action on their own to attend to his physical condition. Although repeatedly instructed regarding the proper feeding and hygiene of the minor, respondents were unable to master these basic tasks. Respondents left dangerous objects such as medication within the reach of the child, and respondents apparently could not comprehend that this could be dangerous to the minor. In the opinion of the psychologists, respondents were unable to recognize and appropriately respond to medical emergencies which may arise. Furthermore, respondents were unable to provide appropriate emotional and physical stimulation for the minor. Consequently, we conclude that the trial court's findings of parental unfitness pursuant to section 1D(b), (d), (g), (*1*), and (o) (Ill. Rev. Stat. 198, ch. 40, par. 1501D(b), (d), (g), (*1*), (o)) are supported by clear and convincing evi-

dence.

The evidence in this case is undisputed that respondents have a great amount of love and affection for their child. We are mindful of the fact that all persons, including the retarded, have the right to marry, establish a home, and raise a family (*Meyer v. Nebraska* (1923), 262 U.S. 390, 67 L. Ed. 1043, 43 S. Ct. 625; *Helvey v. Rednour* (1980), 86 Ill. App. 3d 154, 408 N.E.2d 17) and that these rights are of deep human importance and should not be terminated lightly. (*In re Paul* (1984), 101 Ill. 2d 345, 461 N.E.2d 983.) However, as the court stated in *In re Hrusosky* (1976), 39 Ill. App. 3d 954, 957, 351 N.E.2d 386, 388:

> "[I]t is established by the statutes of this State that the public policy, when a natural parent becomes unfit, is to terminate the parental rights and place the child for adoption [citation]."

Furthermore, as the Court stated in *In re Devine* (1980), 81 Ill. App. 3d 314, 320, 401 N.E.2d 616, 621:

> "[A] parent can be unfit without fault. Such a conclusion is necessary if its is to accord with the legislative intent of an act manifestly concerned with the best interests of the child. Section 20a of the Adoption Act (Ill. Rev. Stat. 1977, ch. 40, par. 1525) expressly instructs that 'the best interests and the welfare of the person to be adopted shall be of paramount consideration in the construction and interpretation of this Act.' We abide by that instruction. A child is no less exposed to danger, no less dirty or hungry because his parent is unable rather than unwilling to give him care."

See also *In re R.M.B.* (1986), 146 Ill. App. 3d 523, 528-29, N.E. 2d , .

For the reasons stated herein, the order of adjudication and the dispositional order entered by the circuit court are hereby affirmed.

Affirmed.

GREEN and MORTHLAND, J.J., concur.